UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS **AUSTIN DIVISION**

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ELEAZAR GONZALES and LUIS GARCIA, Plaintiffs,	CIVIL ACTION NO. A05-CA-223-SS CIVIL ACTION NO. August Laure
v.))
ERNESTO GONZALEZ and SUK CHA GONZALES d/b/a Hong Kong Buffet,)))
Defendant.)) _)

STATEMENT OF THE PLAINTIFFS' CONTENTIONS

The Plaintiffs, Eleazar Gonzalez and Luis Garcia, are Spanish-speaking restaurant workers who were employed at the restaurant of Ernesto Gonzalez and Suk Cha Gonzalez d/b/a/ Hong Kong Buffet, during the period between 2003 to 2005. The Plaintiffs brought this action because the Defendants failed to pay all the wages Plaintiffs were due in violation of the Fair Labor Standards Act and Texas Minimum Wage Act. The Defendant failed to keep complete and regular pay record, as required by the FLSA and the Texas Minimum Wage Act. Therefore, those records are not adequate to reconstruct exactly how much the Plaintiffs were paid and not paid. It will thus be necessary for the Plaintiffs to prove their claims using their best estimates of their unpaid wages. As the Court is aware, Plaintiffs are entitled to prove their claims using such estimates based on the burden of proof principles established in Anderson et al. v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

ESTMATE OF THE PROBABLE LENGTH OF THE TRIAL

The Plaintiffs estimate the length of the trial to be six hours.

Respectfully submitted,

Victoria I. Gavito

Texas Bar No. 24645930

William H. Beardall

TX Bar No. 1980600

EQUAL JUSTICE CENTER

510 South Congress Ave., Suite 206

Austin, Texas 78704

Tel. (512) 474-0007

Fax (512) 474-0008

I certify that the foregoing disclosures, including copies of the documents listed, were sent by facsimile and hand delivered, on <u>February 24, 2006</u> to counsel for Defendant, Jody Sims, 812 San Antonio Street, Suite No. 103, Austin, Texas 78701.

Victoria I. Gavito

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ELEAZAR GONZALES and LUIS GARCIA,	7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Plaintiffs,)	CIVIL ACTION NO. A05-CA-223-SS
v.)	
ERNESTO GONZALEZ and SUK CHA	
GONZALES d/b/a Hong Kong Buffet,	

PLAINTIFFS' PROPOSED STIPULATED FACTS

Now come Plaintiffs and Defendant and stipulate that the following facts are true and correct for the purposes of litigation and may be admitted into evidence as true facts:

- 1. Defendant, Suk Cha Gonzales was the "employer" of Plaintiffs ELEAZAR GONZALES and LUIS GARCIA as that term is defined in 29 U.S.C. § 203(d), from 2003 to 2005 when Plaintiffs worked at Defendant's restaurant.
- 2. At all times during 2003 through 2005, Defendant operated Hong Kong Buffest as an "enterprise engaged in commerce or in the production of goods for commerce" as that term is defined by 29 U.S.C. §203(s).
- 3. During their employment by Defendant, Plaintiffs were engaged in "commerce" within the meaning of 29 U.S.C. § 203(b).
- 4. Plaintiffs were entitled to the minimum wage and overtime protections of the Fair Labor Standards Act 29 U.S.C. §201, et. seq and the Texas Minimum wage Act, Chapter 62, Texas Labor Code.

- 5. The Defendants failed to pay the Plaintiff, Luis Garcia, minimum wage as required by the Fair Labor standards Act, the times of his employment.
- 6. The Defendant failed to pay the Plaintiffs overtime as required by the Fair Labor Standards Act, for their time of employment.

Agreed and Stipulated on behalf of Plaintiffs and Defendants:

Victoria I. Gavito Attorney for Plaintiffs	Jody Sims Attorney for Defendants
Date: 2/21/04	Date:

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CIVIL ACT A05-CA-223		

ELEAZAR GONZALES and LUIS GARCIA,)
Plaintiffs,)
))
v.)
ERNESTO GONZALEZ and SUK CHA)
GONZALES d/b/a Hong Kong Buffet,)
Defendant)
Defendant.) _)

PLAINTIFFS' PROPOSED EXHIBITS

Plaintiffs, *Eleazar Gonzales and Luis Garcia*, expect to offer the following documents at trial:

Plaintiffs Exhibits

- 1. Statement of Plaintiff Eleazar Gonzales' Estimating Wages Owed; and
- 2. Statement of Plaintiff Luis Garcia's Estimating Wages Owed.

Respectfully submitted,

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CIVIL AC A05-CA-2	CTION NO. 23-SS	•

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PLAINTIFFS' PROPOSED WITNESS LIST

Plaintiffs, Eleazar Gonzalez and Luis Garcia, designate the following potential witnesses:

I. Witnesses Plaintiffs Expect to Present:

ELEAZAR GONZALES and LUIS GARCIA,

ERNESTO GONZALEZ and SUK CHA GONZALES d/b/a Hong Kong Buffet,

Plaintiffs,

Defendant.

v.

1. Plaintiff, Eleazar Gonzalez Address: 1633 Royal Crest Apt. 1131

Austin, Texas, 78741

Phone: (512) 445-5435

2. Plaintiff, Luis Garcia Address: 259 Forest Road

Austin, Texas, 78616

Phone: (512) 707-1890

3. Defendant, Ernesto Gonzalez Address: 1100 Overlook Way

Austin, Texas, 78666

Phone: unknown

4. Defendant, Suk Cha Gonzlez Address: 1100 Overlook Way

Austin, Texas, 78666

Phone: unknown

Respectfully submitted,

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ELEAZAR GONZALES and LUIS GARCIA,))
Plaintiffs,) CIVIL ACTION NO.) A05-CA-223-SS
v.)
ERNESTO GONZALEZ and SUK CHA GONZALES d/b/a Hong Kong Buffet,)))
Defendant.	,)

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

- 1. The Plaintiffs, Eleazar Gonzales and Luis Garcia are Spanish-speaking restaurant workers who were employed by Defendants Ernesto Gonzales and Suk Cha Gonzales in their Chinese restaurant.
- 2. At all times during 2003-2005, Defendants operated as an "enterprise engaged in commerce or in the production of goods for commerce" as that term is defined by 29 U.S.C. § 203(s).
- 3. During Luis Garcia's employment by the Defendants in 2004 through 2005, Defendants Ernesto Gonzales and Suk Cha Gonzales failed to pay him the federal and state minimum wage for the first 40 hours he worked.
- 4. During Plaintiff's employment by the Defendants in 2003 through 2005, Defendants Ernesto Gonzales and Suk Cha Gonzales failed to pay the Plaintiffs federal and state overtime for the hours they worked in excess of 40 hours per week.
- 5. Defendant's actions in failing to comply with the requirements of the Fair Labor Standards Act were willful.
- 6. The Court finds that the Defendant owes each of the Plaintiffs the following amounts in unpaid wages and liquidated damages:

NAME	UNPAID	OVERTIME	FLSA	TOTAL
	<u>MINIMUM</u>		LIQUIDATED	DAMAGES
	<u>WAGE</u>		<u>DAMAGES</u>	Not including
				attorneys fees
Eleazar				
Gonzales	\$	\$	\$	\$
Luis Garcia				
	\$	\$	\$	\$
TOTAL				
				\$

CONCLUSIONS OF LAW

- 1. By failing to pay Luis Garcia the federal minimum wage for all the hours worked, Defendants violated his rights protected by the Fair Labor Standards Act, 29 U.S.C. sec. 201, et. seq. and his rights protected by the Fair Labor Standards Act, 29 U.S.C. Sec. 216(b) in the amount set forth in the above findings of fact, plus attorneys fees.
- 2. By failing to pay Luis Garcia the minimum wage mandated by state law, Defendants violated his rights protected by the Texas Minimum Wage Act, TEX. LAB. CODE §62 et. seq., and Luis is entitled to relief pursuant to the amounts set forth in the above findings of fact, plus attorneys fees.
- 3. By failing to pay the Plaintiffs overtime for the hours they worked in excess of 40 hours per week, Defendants violated Plaintiffs' rights protected by the Fair Labor Standards Act, 29 U.S.C. sec. 201, et. seq. and Plaintiffs rights protected by the Fair Labor Standards Act, 29 U.S.C. Sec. 216(b) in the amount set forth in the above findings of fact, plus attorneys fees.
- 4. "If an employee makes a credible showing that he has performed work not properly compensated, 'the employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the Act." *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1331 (5th Cir. 1985). (quoting Anderson v. Mount Clemes Pottery Co., 328 U.S. 680 (1946)). Because Defendant failed to keep adequate records, the Plaintiffs "satisfy the burden with admittedly inexact or approximate evidence." *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1331 (5th Cir. 1985).

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UNITED STATES	DISTRICT JUDGE

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